

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Jack Houghton,
Appellant,

v.

City of Cedar Rapids Board of Review,
Appellee.

ORDER

Docket No. 13-101-0373
Parcel No. 19294-76003-0000

On December 23, 2013, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Appellant Jack Houghton was self-represented. Appellee City of Cedar Rapids Board of Review was represented by Assistant City Attorney Mohammad H. Sheronick. Both parties submitted evidence in support of their positions. The Appeal Board now, having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Jack Houghton appeals from the City of Cedar Rapids Board of Review decision reassessing his property located at 850 Mann Road SW, Cedar Rapids, Iowa. According to the property record card, the improvements consist of a steel-frame, metal warehouse with 110,240 square feet of gross building area, seven overhead doors and six dock-levelers. It also includes 1747 square feet of heated interior office finish. The warehouse was built in 2008, has average quality construction (Grade 4+00), and is in normal condition. The improvements are situated on a 7.560-acre site.

The real estate was classified commercial on the January 1, 2013, assessment and valued at \$3,547,640, representing \$628,000 in land value and \$2,919,640 in improvement value.

Houghton protested to the Board of Review on the ground that the property is exempt from taxes under Iowa Code section 441.37(1)(a)(3). The Board of Review denied the petition.

Houghton appealed to this Board reasserting his claim. He reported that 40% of the building is leased and requests that the unleased portion continue to be exempt from taxation as a speculative shell building.

Houghton testified the improvement was constructed as a speculative shell building and initially classified industrial. Under this arrangement, the improvements were exempt from taxes until leased. In June 2012, he leased approximately 40,000 square feet of the west end of the building to Mac Arthur & Company for an office and warehouse (Exhibit 1). Mac Arthur is a shingle, siding, and insulation distributor. Mac Arthur does not manufacture these products. Houghton testified this property is not a point of sale location. He also testified the tenant is temporarily using the remaining 70,000 square feet for the building for storage until a secure outside storage area is completed, but does not intend to lease this additional area. Correspondence from Jerry Szerbat, President of Milwaukee Insulation/Mac Arthur Company, verified this information. Additionally, Houghton testified the 70,000 square feet has been and is currently listed for lease with Cedar Rapids real estate brokers.

Tom Knapp, a commercial real estate broker, also testified on Houghton's behalf. Knapp testified the broker community is aware that the 70,000 square foot of the building is available for lease. He has also shown the property to prospective tenants.

Both Knapp and Houghton believed that under a partial occupancy, the unleased portion of the building would continue to be exempt from taxes.

City Assessor Scott Labus testified on behalf of the Board of Review. Labus testified the property was assessed industrial until a portion was leased in 2012, and at that time it was reclassified commercial. Labus relied on the definition of speculative shell building in Iowa Code section 427.1(27) and the Iowa Administrative Code rules 701-71.1(5-6) to remove the property's exemption.

Labus points to the statutory provision requiring the property be used for “manufacturing, processing or warehousing the employer’s or user’s product line” to qualify for a speculative shell building status. Labus also relies on the Cedar Rapids Municipal Code (Exhibit B), which mirrors the Iowa Code, and provides that speculative shell buildings exclude use by service-oriented businesses, including commercial office or retail space.

Labus further testified that all warehouses are commercial, except if they are part of a manufacturing plant. He reasoned that since Mac Arthur is not a manufacturer and is using the leased portion of the building as a storage warehouse; the parcel must be classified as commercial. In Labus’ opinion, the primary use of the building is now commercial. Because property can only have one classification, based on primary use, the commercial use replaces the former speculative industrial use and classification.

Conclusion of Law

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In an exemption case, the Appeal Board “strictly construe[s] a statute and any doubt about an exemption is resolved in favor of taxation.” *Carroll Area Child Care Center, Inc. v. Carroll County Bd. of Review*, 613 N.W.2d 252, 254 (Iowa 2000). Until 2012, the entirety of the subject property received an exemption under section 427.1(27) as a speculative shell building. Iowa Code section 427.1(27)(e)(3) defines a “speculative shell building” as:

A building or structure owned and constructed or reconstructed by a community development organization, a not-for-profit cooperative association under chapter 499, or a for-profit entity without a tenant or buyer for the purpose of attracting an employer or user which will complete the building to the employer’s or user’s specification for manufacturing, processing, or warehousing the employer’s or user’s product line.

Speculative shell buildings, if in compliance with local zoning and used or awaiting use as a manufacturing establishment, are exempt from taxation only if allowed by ordinance of the city council or board of supervisors. § 427.1(27).

The City of Cedar Rapids adopted an ordinance exempting shell buildings as authorized by law. It provides for a speculative shell building tax exemption for buildings used for manufacturing processing or warehousing their product line. Cedar Rapids Municipal Code 15A.05. The ordinance mirrors section 427.1(27)(e)(3), except that it also states that speculative shell buildings “do not include service-oriented businesses, such as commercial office or retail space.” *Id.* 15A.02(c). The City has interpreted this provision to exclude a commercially classified property from the exemption.

The Iowa Department of Revenue has promulgated rules for the classification and valuation of real estate. *See* Iowa Admin. Code r. 701-71.1. Classifications are based on the best judgment of the assessor following the guidelines set out in the rule. r. 701-71.1(1). Boards of Review, as well as assessors, are required to adhere to the rules when they classify property and exercise assessment functions. r. 701-71.1(2). Property is to be classified “according to its present use and not according to any highest and best use.” R. 701-71.1(1). There can be only one classification per property. *Id.* The property at issue must be classified as either industrial or commercial; it cannot be both. Property

is classified based on its present and primary use. *Id.*; *Polk Cnty. Bd. of Review v. Property Assessment Appeal Bd.*, 2010 WL 3155049 *2 (Iowa App. Ct. 2010) (citing *Sevde v. Bd. of Review*, 434 N.W.2d 878, 880 (Iowa 1989)).

Iowa Admin. Code r 701-71.1(6)(a) defines industrial real estate as:

[L]and, buildings, structures, and improvements used primarily as a manufacturing establishment. A manufacturing establishment is a business entity in which the primary activity consists of adding to the value of personal property by any process of manufacturing, refining, purifying, the packing of meat, or the combination of different material with the intent of selling the product for gain or profit. Industrial real estate includes land and buildings used for the storage of raw materials or finished products and which are an integral part of the manufacturing establishment, and also includes office space used as part of a manufacturing establishment.

Conversely, commercial real estate is defined to include “all lands and improvements and structures located thereon which are primarily used or intended as a place of business where goods, wares, services, or merchandise is stored or offered for sale at wholesale or retail.” *Id.* r. 701-71.1(5).

In this case, Houghton contends his property should retain a partial exemption for the portion of the shell building that remains vacant. Section 427.1(27)(c) states that “If the shell building or any portion of [it] is leased or sold, the portion of the shell building which is leased or sold . . . shall not be entitled to an exemption.” Based on this language, it would seem the inverse would also be true and that the unleased or unsold portion of a shell building should continue to receive the exemption under section 427.1(27).

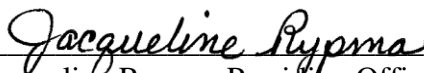
The Board of Review contends that if the leased portion of Houghton’s warehouse had been leased to a manufacturing establishment, the building’s classification would have remained industrial. Under that scenario, the unleased portion would have continued to qualify for the tax exemption on a prorated basis. However, the Assessor determined the primary use of Houghton’s property changed from industrial to commercial when it was leased to a non-manufacturing tenant in 2012. Because the

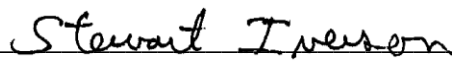
city ordinance states that the speculative shell building exemption does not apply to commercial properties, the Board of Review argues the entire property is now subject to taxation.

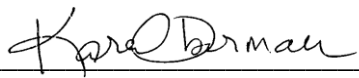
We find that the current primary use of Houghton's property became commercial at the time it was leased to the current tenant, and a property may have only one classification. Further, the City's interpretation of its ordinance is reasonable in that commercial property does not qualify for the speculative shell building tax exemption under the ordinance. For the foregoing reasons, Houghton's assessment must be affirmed.

THE APPEAL BOARD ORDERS Jack Houghton's property assessment in Cedar Rapids, Iowa is classified commercial and the total assessment of \$3,547,640, representing \$628,000 in land value and \$2,919,640 in improvement value, is affirmed.

Dated this 29th day of January, 2014.


Jacqueline Rypma, Presiding Officer


Stewart Iverson, Board Chair


Karen Oberman, Board Member

Copies to:
Jack Houghton
12814 Cardinal
Urbandale, IA 50323
APPELLANT

Mohammad H. Sheronick
Assistant City Attorney
101 First Street
Cedar Rapids, IA 52401
ATTORNEY FOR APPELLEE